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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
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14 QUY TRUONG, an individual,
15 Plaintiff,
16 vs.

17 NM 168, LLC, a limited liability
18 company
19 Defendants.
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Case No.: 8:23-cv-591

COMPLAINT FOR

**(1) VIOLATION OF THE UNRUH
CIVIL RIGHTS ACT
(CALIFORNIA CIVIL CODE
§§ 51, 52);**

**(2) VIOLATIONS OF THE
AMERICANS WITH
DISABILITIES ACT OF 1990**

I.
SUMMARY

1. This is a civil rights action by plaintiff Quy Truong (“Plaintiff”) for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex bearing the legal address of 10544 Westminster Ave, Garden Grove, CA 92843-4816 (APN: 099-481-51) (the “Property”). Plaintiff is often in the area for dining and entertainment as he lives approximately 30 minutes from the Property and the Property is in a popular area for dining. On this particular occasion he desired to visit the “Khoi Hung Restaurant” restaurant located on the Property.

2. Plaintiff seeks damages, injunctive and declaratory relief, attorney’s fees and costs pursuant to the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101, et seq.) and related California statutes¹ against Defendant, the owner of the Property NM 168, LLC, a limited liability company (“Defendant”).

II.
JURISDICTION

3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA claims.

4. Supplemental jurisdiction for claims brought under parallel California law – arising from the same nucleus of operative facts – is predicated on 28 U.S.C § 1367.

5. Plaintiff’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

III.
VENUE

6. All actions complained of herein take place within the jurisdiction of the United States District Court, Central District of California, and venue is invoked

¹ Plaintiff is not currently asserting a cause of action under California Civil Code § 55, but may amend his complaint at a later time upon discovery of facts which give rise to such a claim.

1 pursuant to 28 U.S.C. § 1391(b), (c).

2 **IV.**

3 **PARTIES**

4 **7.** On information and belief, Plaintiff alleges that Defendant is or was at
5 the time of the incident, the owner, operator, lessor and/or lessee of the Property, and
6 consists of a person (or persons), firm, company, and/or corporation.

7 **8.** Plaintiff suffers from spina bifida and as a result is unable to walk or
8 stand without the use of a wheelchair and needs a wheelchair at all times when
9 traveling in public. Plaintiff is “physically disabled” as defined by all applicable
10 California and United States laws, and a member of the public whose rights are
11 protected by these laws. Plaintiff is a resident of Orange County, California. Plaintiff
12 is not a high frequency litigant as that term is defined under California Code of Civil
13 Procedure § 425.55. In the twelve (12) months prior to the filing of this lawsuit,
14 Plaintiff filed four (4) other accessibility complaints.

15 **V.**

16 **FACTS**

17 **9.** On or about March 4, 2023, Plaintiff desired to patronize the Property.
18 On this particular visit, he desired to patronize the “Khoi Hung Restaurant” restaurant
19 operating at the Property. The Property is a sales or retail establishment, open to the
20 public, which is intended for nonresidential use and whose operation affects
21 commerce.

22 **10.** Plaintiff visited the Property and encountered barriers (both physical and
23 intangible) that interfered with – if not outright denied – Plaintiff’s ability to use and
24 enjoy the goods, services, privileges and accommodations offered at the facility. To
25 the extent known by Plaintiff, the barriers at the Property included, but are not limited
26 to the following:

27 **a.** There are no accessible parking spaces at the Property. Without an
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1 accessible parking space that is of proper width and length and which is
2 accompanied by an access aisle, Plaintiff has nowhere to safely park and
3 exit his vehicle. Plaintiff needs an access aisle to provide him the
4 necessary floor space to transfer in/out of his vehicle and out of/into his
5 wheelchair.

6 **b.** Alternatively, accessible parking spaces do not have the required vertical
7 signage and have pavement markings that are so faded that such spaces
8 are rendered for all purposes non-existent. Without proper signage and
9 pavement marking, Plaintiff cannot determine if such spaces are in fact
10 intended for persons with disabilities and do not discourage others non
11 disabled patrons from parking in such spaces.

12 **c.** To the extent that there are in fact accessible parking spaces, such
13 parking spaces do not lead to accessible pathways. Without accessible
14 pathways that are of compliant width and slope, Plaintiff cannot
15 comfortably and safely travel throughout the Property.

16 **11.** These barriers to access are listed without prejudice to Plaintiff citing
17 additional barriers to access after inspection by Plaintiff's access consultant, per the
18 9th Circuits standing standards under *Doran v. 7-Eleven, Inc.* 524 F.3d 1034 (9th Cir.
19 2008). These barriers prevented Plaintiff from enjoying full and equal access to the
20 Property.

21 **12.** Plaintiff experienced difficulty, discomfort and embarrassment from the
22 accessible barriers he encountered. Although he would like to visit the Property
23 again, he continues to be deterred from visiting the Property because of the future
24 threats of injury created by these barriers. Plaintiff would return to the Property once
25 the barriers are removed. Plaintiff desires to return to the Property as he enjoys the
26 restaurant located at the Property and lives close to the Property. Within six months
27 of the barriers being corrected Plaintiff would return to the Property to not only
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14. On information and belief, Plaintiff alleges that at all relevant times, Defendant has possessed and enjoyed sufficient control and authority to modify the Property to remove impediments to wheelchair access and to comply with the Americans with Disabilities Act Accessibility Guidelines and Title 24 regulations. Defendant has not removed such impediments and has not modified the Property to conform to accessibility standards.

FIRSTCAUSE OF ACTION: VIOLATION OF CALIFORNIA LAW
INCLUDING: THE UNRUH ACT, CIVIL CODE §§ 51, 52 AND THE
AMERICANS WITH DISABILITIES ACT AS INCORPORATED BY CIVIL
CODE SECTION 51(f)

16. At all times relevant to this complaint, California Civil Code § 51 has provided that physically disabled persons are free and equal citizens of the state, regardless of disability or medical condition:

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1 equal accommodations, advantages, facilities, privileges, or services
2 in all business establishments of every kind whatsoever. Cal. Civ.
3 Code § 51(b).

4 17. California Civil Code § 52 provides that the discrimination by Defendant
5 against Plaintiff on the basis of his disabilities constitutes a violation of the anti-
6 discrimination provisions of §§ 51 and 52.

7 18. Defendant's discrimination constitutes a separate and distinct violation of
8 California Civil Code § 52 which provides that:

9 Whoever denies, aids or incites a denial, or makes any discrimination
10 or distinction contrary to section 51, 51.5 or 51.6 is liable for each and
11 every offense for the actual damages, and any amount that may be
12 determined by a jury, or a court sitting without a jury, up to a
13 maximum of three times the amount of actual damage but in no case
14 less than four thousand dollars (\$4,000) and any attorney's fees that
15 may be determined by the court in addition thereto, suffered by any
16 person denied the rights provided in Section 51, 51.5 or 51.6.

17 19. Plaintiff continues to be deterred from visiting the Subject Property based
18 upon the existence of the accessible barriers. In addition to the occurrence in March
19 2023, Plaintiff is entitled to \$4,000.00 in statutory damages for each additional
20 occurrence of discrimination under California Civil Code § 52.

21 20. Any violation of the Americans with Disabilities Act of 1990 (as pled in
22 the Third Cause of Action) constitutes a violation of California Civil Code § 51(f)
23 thus independently justifying an award of damages and injunctive relief pursuant to
24 California law. Per § 51(f), "[a] violation of the right of any individual under the
25 Americans with Disabilities Act of 1990 ... shall also constitute a violation of this
26 section."

27 21. The actions and omissions of Defendant as herein alleged constitute a
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1 denial of access to and use of the described public facilities by physically disabled
 2 persons within the meaning of California Civil Code §§ 51 and 52. As a proximate
 3 result of Defendant's action and omissions Defendant has discriminated against
 4 Plaintiff in a violation of Civil Code §§ 51 and 51.

5 VII.

6 **SECOND CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH** 7 **DISABILITIES ACT OF 1990 (42 USC §§ 12101 *et seq.*)**

8 22. Plaintiff incorporates the allegations contained in paragraphs 1 through
 9 21 for this claim and incorporates them herein.

10 23. As part of the Americans with Disabilities Act of 1990 ("ADA"),
 11 Congress passed "Title III – Public Accommodations and Services Operated by
 12 Private Entities." 42 U.S.C. § 12181 *et seq.* The Property is one of the "private
 13 entities" which are considered "public accommodations" for purposes of this title,
 14 which includes any "restaurant, bar, or other sales or rental establishment serving food
 15 or drink." § 301(7)(B).

16 24. The ADA states that "[n]o individual shall be discriminated against on
 17 the basis of disability in the full and equal enjoyment of the goods, services, facilities,
 18 privileges, advantages, or accommodations of any place of public accommodation by
 19 any person who owns, leases, or leases to, or operates a place of public
 20 accommodation." 42 U.S.C. § 12182.

21 25. The acts and omissions of Defendant set forth herein were in violation of
 22 Plaintiff's rights under the ADA and the regulations promulgated thereunder, 28 CFR
 23 Part 36 *et seq.*

24 26. On information and belief, Plaintiff alleges that the Property was
 25 constructed after January 26, 1992.

26 27. On information and belief, Plaintiff alleges that the removal of each of
 27 the barriers complained of by Plaintiff as hereinabove alleged, were at all times herein
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1 mentioned "readily achievable" under the standards §§ 301 and 302 of the ADA. As
2 noted hereinabove, removal of each and every one of the architectural barriers
3 complained of herein were also required under California law. Further, on information
4 and belief, alterations, structural repairs or additions since January 26, 1993 have also
5 independently triggered requirements for removal of barriers to access for disabled
6 persons per § 303 of the ADA. In the event that removal of any barrier is found to be
7 "not readily achievable," Defendant still violated the ADA, per § 302(b)(2)(A)(v) by
8 failing to provide all goods, services, privileges, advantages and accommodations
9 through alternative methods that were readily achievable.

10 28. On information and belief, as of the date of Plaintiff's encounter at the
11 Property and as of the filing of this Complaint, the Defendant has denied and continue
12 to deny full and equal access to Plaintiff and to other disabled persons, including
13 wheelchair users, in other respects, which violate plaintiff's rights to full and equal
14 access and which discriminate against Plaintiff on the basis of his disability, thus
15 wrongfully denying to plaintiff the full and equal enjoyment of the goods, services,
16 facilities, privileges, advantages and accommodations, in violation of §§ 302 and 303
17 of the ADA. 42 USC §§ 12182 and 12183.

18 29. On information and belief, Defendant has continued to violate the law
19 and deny the rights of Plaintiff and other disabled persons to access this public
20 accommodation since on or before Plaintiff's encounters, as previously noted.
21 Pursuant to the ADA, § 308, 42 USC 12188 *et seq.*, Plaintiff is entitled to the
22 remedies and procedures set forth in § 204(a) of the Civil Rights Act of 1964, 42 USC
23 2000(a)-3(a), as Plaintiff is being subjected to discrimination on the basis of disability
24 in violation of the ADA or has reasonable grounds for believing that he is about to be
25 subjected to discrimination. Pursuant to § 308(a)(2), "In cases of violations of § 302(b)
26 (2)(A)(iv) and § 303(a) ... injunctive relief shall include an order to alter facilities to
27 make such facilities readily accessible to and usable by individuals with disabilities to
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1 the extent required by this title."

2 30. Plaintiff seeks relief pursuant to remedies set forth in § 204(a) of the Civil
3 Rights Act of 1964, 42 USC 2000(a)-3(a), and pursuant to Federal Regulations
4 adopted to implement the Americans with Disabilities Act of 1990. Plaintiff is a
5 qualified disabled person for purposes of § 308(a) of the ADA who is being subjected
6 to discrimination on the basis of disability in violation of Title III and who has
7 reasonable grounds for believing he will be subjected to such discrimination each time
8 that he may attempt to use the property and premises.

9 **PRAYER**

10 WHEREFORE, Plaintiff prays that this court award damages and provide relief
11 as follows:

12 1. Issue a preliminary and permanent injunction directing Defendant as current
13 owners, operators, lessors, and/or lessees of the Property to modify the above
14 described Property and related facilities so that each provides full and equal access to
15 all persons, including but not limited to persons with physical disabilities who use
16 wheelchairs, and issue a preliminary and permanent injunction directing Defendant to
17 provide and maintain facilities usable by Plaintiff and similarly situated persons with
18 disabilities, and which provide full and equal access, as required by law, including
19 appropriate changes in policy;

20 2. Retain jurisdiction over the Defendant until such time as the Court is satisfied
21 that Defendant's unlawful policies, practices, acts and omissions, and maintenance of
22 inaccessible public facilities as complained of herein no longer occur, and can not
23 recur;

24 3. Award to Plaintiff statutory damages of \$4,000 for each occurrence of
25 deterrence or discrimination experienced by Plaintiff until a final judgment is rendered
26 in this case, all according to proof;
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1 4. Award to Plaintiff all appropriate damages, including but not limited to
2 statutory damages, general damages and treble damages in amounts within the
3 jurisdiction of this Court, all according to proof;

4 5. Award to Plaintiff all reasonable statutory attorney fees, litigation expenses, and
5 costs of this proceeding as provided by law;

6 6. Award to Plaintiff prejudgment interest pursuant to California Civil 17 Code§
7 3291;

8 7. Grant such other and further relief as this Court may deem just and proper.
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11 ASCENSION LAW GROUP, PC

12 DATE: April 4, 2023

13 /s/Pamela Tsao

14 Pamela Tsao, attorney for Plaintiff

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